**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting.

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 107 (S/S) of 2000

Date of decision: 18-9-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date:- 18-9-2006 Initial of Judge

**Note:** - Bench Reader will attach this at the top of the first page of the judgment when it is put up before Judge for signature.

**HIGH COURT OF UTTARANCHAL, AT NAINITAL**

**Civil Misc. Writ Petition No. 107 (S/S) of 2000**

Natthi Ram Uniyal
S/o Sri Mahabir Prasad working as Registration Clerk
In the Office of District Registrar, Uttarkashi …Petitioner

**Versus**

1. State of Uttarakhand
through Inspector General Registration, Dehradun

2. District Registrar
Uttarkashi … Respondents

Mr. H.M. Raturi, learned counsel for the petitioner.
Mr. Paresh Tripathi, learned standing counsel for the respondents/State.

**Per Hon'ble J.C.S. Rawat, J.**

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioners have sought the following relieves:-

> "i) To issue a writ order or direction in the nature of certiorari for quashing the order dated 14/15.11.2000 (Annexure-3) passed by the District Registrar, Uttarkashi.
>
> ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to regularize the services of the petitioner as the post of Registration Clerk and to pay the salary as and when it falls due.
>
> iii) To issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
>
> iv) To award the cost of the writ petition to the petitioner."

2. The petitioner was appointed on ad hoc basis as peon in the office of District Registrar in the year 1984 and his services were regularized by the order of the District Registrar, Uttarkashi vide order dated 28.09.1989 w.e.f. 01.03.1989. The petitioner was promoted as Registration Clerk by the order of the District Registrar dated 11.02.1992.

Pursuant to the said order, the petition had joined his duties and he had been working as Registration Clerk since 11.02.1992. The petitioner was reverted to his original post of peon on 14.11.2000. The said reversion order has been challenged on the ground that the respondent No. 2 had passed the said order without affording any opportunity to the petitioner. It was further challenged that Sri Bachan Singh Rana who was appointed as peon on ad hoc basis on 11.02.1992, his services were regularized by the respondents but the petitioner has been reverted to the post which is not vacant.

3. The respondent Nos. 1 and 2 had filed their counter affidavit in which they have admitted that the petitioner had been working as Registration Clerk since 01.02.1992 and the petitioner is not entitled to be regularized on the said post of Registration Clerk. It was further pleaded that the petitioner was promoted in the local arrangement vide order dated 11.02.1992 passed by the District Registrar, Uttarkashi and the said local arrangement could be cancelled without affording any opportunity to the petitioner. It was further pleaded that Bachan Singh Rana who was appointed as peon in place of the petitioner had been removed from his services after two months from the date of his appointment due to his unsatisfactory work. The said post is vacant till then. There is no post of Registration Clerk vacant at present. At the last, the respondents had prayed that the petition may be dismissed.

4. Heard Sri H.M. Raturi, learned counsel for the petitioner, Sri Paresh Tripathi, learned Standing Counsel for the respondents/State and pursued the record.

5. It was contented by the learned counsel for the petitioner that the petitioner was promoted on 11.02.1992 and thereafter he had been working as Registration Clerk and he had completed more than 8 years at the time of filling the petition. He further contended that the petitioner is entitled to be regularized on the post of Registration Clerk. Learned Standing Counsel refuted the contention and contended that the petitioner was promoted in local arrangement vide order dated 11.02.1992 and the order itself reveals that it was made on the local arrangement. Perusal of the order dated 11.02.1992 clearly reveals that the said order was passed as a local arrangement. The petitioner was promoted for a stop gap arrangement in the said post due to the promotion of one Sher Singh Rana who had been promoted as Sub Registrar as a stop gap arrangement. It is also admitted to the petitioner at para 7 of his petition that the petitioner had been working as a Registration Clerk since 01.03.1992 and he is claiming regularization on the said post. The pleadings of the parties clearly reveal that the petitioner was never promoted in accordance with due process of law. If the petitioner had been regularized on the said post, the petitioner had no right to retain the said post of the Registration Clerk. Regularization cannot be claimed as a matter of right. Irregular appointment and promotion cannot be legalized by taking recourse of regularization. The constitutional scheme which the country had adopted does not contemplate any backdoor appointment and promotion. If the original promotion was not made on the regular post by following the due process of selection as emphasized in the relevant rules, it is not open to the court to prevent regular recruitment at the instance of stop gap arrangement employees or ad hoc employees whose period of employment had come to an end

or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The Hon'ble Apex Court has held in para 34 and 36 in **Secretary, State of Karnataka & others Vs. Umadevi & Others** reported in **2006 AIR SCW 1991** as under:

> *"34. ……Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disable from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be*

*absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.*

*35. ……*

*36. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined*

*to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."*

6. In view of the foregoing discussion, it is clear that the promotion of the petitioner was made only for the stop gap arrangement on ad hoc basis, as such, no right has been created to retain that post by the petitioner.

7. It was further contended by the learned counsel for the petitioner that the impugned order had been passed by the respondent No. 2 without affording any opportunity to the petitioner. It was further contended that the respondent No. 2 had not given any notice or had not afforded any opportunity to the petitioner before passing the impugned order. Learned Standing Counsel refuted the contention and contended that the appointment of the petitioner was made only for the stop gap arrangement and as such, there is no need to give any notice to the petitioner. It was further contended that the order of the promotion clearly reveals that the appointment of the petitioner would be terminated without notice at any time. The principles of natural justice

are required to be complied with having regard to the fact situation of the case. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. When the petitioner was promoted he was aware that he had been promoted on stop gap arrangement. The person who has been appointed on stop gap arrangement, he would have been aware of the consequences of the said promotion. It has been held in **State of U.P. Vs. Neeraj Awasthi and others, (2006) 1 SCC p/667** as under:-

> *"47……..The principle of natural justice would be attracted only when services of some persons are terminated by way of a punitive measure or thereby a stigma is attached.* ***{See Suresh Chandra Verma (Dr.) Vs. Chancellor, Nagpur University 1990(4) SCC 55, 1991 SCC (L&S) 194, Karnataka Public Service Commission Vs. B.M. Vijaya Shankar 1992(2) SCC 206, 1992 SCC (L&S) 362 and State of M.P. Vs. Shyama Parthhi 1996(7) SCC}***
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> *48. In* ***Viveka Nand Seti Vs. Chairman, J&K Bank Ltd. 2005(5) SCC 337,*** *it has been held in para 22. "The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply****. {See Gurjeewan Garewal (Dr.) Vs. Dr. Sumitra Dash 2004(5) SCC 263}.*** *The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."*
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> *49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with.*

8. The petitioner was appointed on the stop gap arrangement and there is no need to give any notice or to afford any opportunity to the petitioner.

9. It has been held by the Division Bench of this Court at para Nos.11, 12 and 13 in **Jagat Singh Vs. The Director of Education and others** decided on 11th August, 2006 as under:

> "11. However, in S.L. Kapoor v. Jagmohan (supra) the Hon'ble Supreme Court has also observed as under:-
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> *"As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."*
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> 12. In **M.C. Mehta v. Union of India 1999 (6) SCC 237,** the Hon'ble Supreme Court has laid down that there can be a certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary.
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> *13. In **Aligarh Muslim University v. Mansoor Ali Khan AIR 2000 SC 2783** the Hon'ble Supreme Court considered the question whether on the facts of the case the employee can invoke the principle of natural Justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court has also places reliance in the matter of **State Bank of Patiala v. S.K. Sharma 1996 SCC (L&S) 717 and Rajendra Singh V. State of M.P. 1996(3) SCC 364** where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In **Viveka Nand Sethi v. Chairman, J&K Bank Ltd. 2005(5) SCC 337** the Hon'ble Supreme Court has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straight-jacket formula. It cannot be applied*

> *in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply."*

10. The principles of natural justice are not rigid or immutable and hence they can not be imprisoned in a straight jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting legal provisions a Court of law can not be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'. In certain circumstances application of the principle of natural justice can be modified and even excluded. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose warrant exclusion of the right of hearing. Some times the principle of 'audi alteram partem' can not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. In such situation the right of hearing should be excluded. I do not find any force in the arguments of the learned counsel for the petitioner.

11. It has further been held by the Hon'ble Supreme Court in Umadevi (Supra) that while directing the appointments, temporary or casual, be regularized or made permanent,

Court are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain – not at arms length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By going so, it will be creating another mode of public appointment which is not permissible.

12. It was further contended on behalf of the learned counsel for the petitioner that one Shri Bachan Singh Rana who was appointed as peon on ad hoc basis on 11.02.1992 on the post of peon in place of the petitioner, his services were regularized by the respondents but the petitioner has now been reverted to the post which is not vacant. Learned Standing Counsel refuted the contention and contended that the counter affidavit of the respondents clearly reveals that the services of Bachan Singh Rana was not found satisfactory and he had been removed from his services immediately after two months from the date of his appointment. The petitioner has not rebutted the same. It is evident that Bachan Singh Rana had been removed from his services immediately after two months from the date of his appointment, as such, the post had been lying vacant. The argument of the learned counsel for the petitioner in this regard is misconceived.

13. In view of the foregoing discussion, the writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

14. All applications pending in this case are stand disposed of in terms of the judgment.

**(J.C.S. Rawat, J.)**

18th September, 2006
Shiv